United States Department of Labor Employees' Compensation Appeals Board

I A Appellant	.)
J.A., Appellant)
and) Docket No. 11-1620) Issued: April 12, 2012
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, Employer)))
Appearances: Thomas R. Uliase, Esq., for the appellant Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On July 5, 2011 appellant, through his representative, filed an application for review of a March 23, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 11-1620.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision.

On September 21, 2010 appellant, then a 63-year old mail handler, filed a traumatic injury claim alleging that he sustained a left hand, shoulder and head injury on that same date when he was lifting flat tubs and tray mail, claim No. xxxxxxx360. By decision dated October 25, 2010, OWCP denied his claim on the grounds that the evidence submitted was not sufficient to establish fact of injury. On November 1, 2010 appellant, through counsel, requested a hearing before an OWCP hearing representative. In support of his request, appellant submitted medical records diagnosing cervical radiculopathy and cervical strain.

By decision dated March 23, 2011, an OWCP hearing representative denied appellant's claim on the grounds that there was no medical evidence that provided a diagnosis which could be connected to an accepted September 21, 2010 employment incident. In its decision, the hearing representative referenced a previous June 11, 2007 traumatic injury claim appellant filed when he was hit on the head by an APCS machine cover on April 27, 2007, claim

No. xxxxxx149. OWCP accepted the claim for a condition of concussion without loss of consciousness. The hearing representative noted that, after the acceptance of claim No. xxxxxx149, appellant submitted additional medical evidence which recommended cervical surgery and diagnosed cervical degenerative disc, joint disease with underlying radiculopathy and headaches. In footnote 1 of the September 21, 2010 decision, the hearing representative stated that, "Since I have reviewed case xxxxxxx149 in connection with case xxxxxxx360 and since both cases involve the same condition, they should be combined." The case record as submitted to the Board does not include the record for xxxxxxx149.

As both cases involve the same cervical condition and the medical evidence from claim No. xxxxxx149 was reviewed by the hearing representative in OWCP's September 21, 2010 decision, the medical evidence contained in claim No. xxxxxx149 will necessarily bear directly on appellant's claim for compensation in this claim, No. xxxxxx360.

This case will be remanded to OWCP to consolidate case files xxxxxx149 and xxxxxx360. Reconstruction of the record will be followed by a *de novo* decision on the merits of the claim, in order to protect appellant's appeal rights.

IT IS HEREBY ORDERED THAT the Office Workers' Compensation Programs' March 23, 2011 decision be set aside and the case remanded for further development consistent with this order.

Issued: April 12, 2012 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

> Alec J. Koromilas, Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board